

REMARKS

The Office Action provisionally rejected Claims 1-4 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-9 of co-pending Application No. 10/762,654.

The present Application was filed on July 18, 2003, while the co-pending Application was filed on January 21, 2004. Therefore, the present Application was filed before the co-pending Application.

Under MPEP § 804.I.B.1:

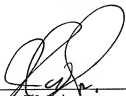
If a “provisional” nonstatutory obviousness-type double patenting (ODP) rejection is the only rejection remaining in the earlier filed of the two pending applications, while the later-filed application is rejectable on other grounds, the examiner should withdraw that rejection and permit the earlier-filed application to issue as a patent without a terminal disclaimer.

Since the present application is the earlier filed application, the provisional nonstatutory obviousness is the only remaining rejection, and the later-filed application is currently rejected on other grounds, the Office Action should withdraw the provisional nonstatutory obviousness rejection and allow the present application to issue as a patent without a terminal disclaimer.

If the Examiner believes that a telephone interview will help further the prosecution of this case, the Examiner is respectfully requested to contact the undersigned attorney at the listed telephone number.

Very truly yours,

SNELL & WILMER L.L.P.



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